

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

EARNEST EDWARD REED, JR.
(AIS# 111914),

Plaintiff,

v.

JEAN DARBOUZE, M.D. and PRISON
HEALTH SERVICES, INC.,

Defendants.

CIVIL ACTION NO.
2:05-CV-770-T

MOTION FOR HIPAA PROTECTIVE ORDER

Defendants, JEAN DARBOUZE, MD (“Dr. Darbouze”) and PRISON HEALTH SERVICES, INC. (“PHS,” collectively with Dr. Darbouze, the “PHS Defendants”), respectfully request the Court, pursuant to 45 C.F.R. § 164.512(e)(1), enter the proposed Qualified HIPAA Protective Order in the above-styled case, which is attached hereto as Exhibit “A.” As grounds for this Motion, PHS Defendants state as follows:

1. This action involves, in part, allegations that PHS Defendants denied and/or delayed in providing medical treatment to Plaintiff Earnest Edward Reed, Jr. (“Plaintiff”).

2. Certain of the information disclosed and/or sought as discovery in this matter is, or contains, medical records that constitute individually identifiable medical information that is “protected health information” as defined in the Health Insurance Portability and Accountability Act of 1996 and its related regulations (“HIPAA”). HIPAA, among other things, directly regulates health care providers as to their uses and disclosures of such information. HIPAA specifically anticipates and authorizes the disclosure of protected health information in the course of a judicial or administrative proceeding in response to an Order by a Court issued

pursuant to 45 C.F.R. § 164.512(e)(1). For the Court's convenience, a copy of 45 C.F.R. § 164.512(e)(1) is attached to this Motion as Exhibit "B."

3. PHS Defendants currently have custody and control of certain of Plaintiff's medical records as a contracted agent of the Alabama Department of Corrections ("ADOC"). Although PHS is not a covered entity directly regulated under HIPAA, ADOC as the owner of Plaintiff's medical records is a covered entity under by HIPAA and has requested that PHS request such an order before producing Plaintiff's medical records. PHS Defendants believe that such an Order is appropriate and will not jeopardize the discovery rights of Plaintiff in this matter.

4. PHS Defendants respectfully request that the Court grant this Motion and issue the attached Qualified HIPAA Protective Order in this case. As contemplated under HIPAA, PHS Defendants affirm that if the Court enters such an Order, any medical information that has been or will be produced will be used exclusively for the purposes of this litigation and this medical information and documentation will either be returned or destroyed at the end of this litigation. See 45 C.F.R. § 164.512(e).

WHEREFORE, PREMISES CONSIDERED, PHS Defendants respectfully request this Court to enter the Qualified HIPAA Protective Order attached hereto pursuant to 45 C.F.R. § 164.512(e)(1).

Respectfully submitted on this the 7th day of November 2005.

/s/ William R. Lunsford

One of the Attorneys for PHS Defendants

OF COUNSEL:

David B. Block
William R. Lunsford
BALCH & BINGHAM LLP
Post Office Box 18668
Huntsville, AL 35804-8668
Telephone: (256) 551-0171
Facsimile: (256) 512-0119

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and service will be perfected by email to the CM/ECF participants or by postage prepaid first class mail to the following this the 7th day of November, 2005:

Earnest Edward Reed, Jr. (AIS # 111914)
Easterling Correctional Facility
200 Wallace Drive
Clio, Alabama 36017-2615

/s/ William R. Lunsford
Of Counsel